

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On July 27, 2005 appellant, then a 43-year-old customer service representative, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome in her left wrist which resulted in pain in her shoulder and wrist, headaches, and nausea due to factors of her federal employment. She noted that she first became aware of her condition and its relation to her federal employment on July 25, 2005. On September 8, 2005 OWCP accepted appellant's claim and assigned OWCP File No. xxxxxx672 for sprain and strain of the left shoulder, wrist, and neck, and tenosynovitis of the left upper extremity. It subsequently expanded the acceptance of the claim to include aggravation of cervical degenerative disc disease. Appellant returned to regular-duty work on January 17, 2006. On May 23, 2006 she reduced her work schedule from eight hours to six hours per day.

On February 22, 2015 appellant filed claims for compensation (Form CA-7) for total disability for the period February 9, 2015 through January 7, 2016.³

In a March 10, 2015 development letter, OWCP notified appellant that it considered her claims for compensation to be a claim for a recurrence of disability. It requested that she provide additional narrative medical evidence establishing a change in the nature and extent of her accepted medical conditions resulting in her total disability from work for the period claimed. OWCP afforded appellant 30 days to respond.

Appellant submitted a series of reports signed by Laura Duncan, a nurse practitioner. In form reports dated April 5 and 7, and June 3, 2015, Dr. P. James Nugent, a Board-certified orthopedic surgeon, found that she was totally disabled from work. He diagnosed cervical spine pain and stiffness.

By decision dated June 29, 2015, OWCP denied appellant's claim for recurrence of total disability. On July 3, 2015 she requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant subsequently submitted July 27 and September 21, 2015 form reports from Dr. Nugent repeating his findings of total disability due to cervical pain and stiffness.

In reports dated January 7 and February 4, 2016, Dr. Sanjay J. Chauhan, a Board-certified neurologist, examined appellant due to neck, left shoulder, left elbow and wrist, right shoulder and hand pain with numbness, aggravation of headaches, and difficulty sleeping. He diagnosed chronic left shoulder, wrist and cervical strain, left wrist and hand tenosynovitis, cervical spine

² Docket No. 18-1064 (issued April 26, 2019).

³ Appellant filed a series of CA-7 forms claiming disability through January 8, 2016. She returned to work six hours a day on January 8, 2016.

degeneration, and left upper extremity tenosynovitis especially in the wrist. Dr. Chauhan attributed her diagnosed conditions to her work activities, including repetitive work, prolonged posture, and staring at a computer monitor. He determined that appellant could return to modified part-time work on January 6, 2016 with restrictions.

An oral hearing was held on March 11, 2016. Appellant testified that her cervical condition had changed resulting in her disability from work. Following the oral hearing, she submitted a December 16, 2014 report from Dr. Nugent who diagnosed cervical spine pain and cervical degenerative disc disease.

Appellant submitted reports from Dr. Chauhan dated February 27 and March 17 and 28, 2016. Dr. Chauhan reviewed Ms. Duncan's treatment notes and reported that the July 27, 2015 x-ray demonstrated increased degeneration from C4-7, most marked at C5-6, with spurring and decreased disc height. He noted that Ms. Duncan believed that the increased cervical degeneration led to nerve impingement and increased radicular symptoms. Dr. Chauhan determined that based on Ms. Duncan's records appellant's cervical spine degeneration had spontaneously worsened and noted that musculoskeletal conditions tended to worsen as time went by. He opined that her degenerative changes were due to the 2005 occupational injury and that as time progressed, those injured body parts developed degeneration and increasing spurring ultimately leading to the worsening that she experienced. Dr. Chauhan found that appellant could continue modified part-time work. In a report dated April 14, 2016, he provided work restrictions including no more than one continuous hour of telephone and keyboard usage alternated with one hour of other activities, and working only six hours a day.

By decision dated May 24, 2016, an OWCP hearing representative vacated the June 29, 2015 OWCP decision and remanded the case for further development of the medical evidence.

On July 13, 2016 the employing establishment offered appellant a limited-duty position as an accounts management contact representative working six hours per day. The work restrictions of the offered position included one hour of keyboarding and telephone use followed by one hour with no keyboarding or telephone use. Appellant accepted this position on August 22, 2016.

On July 20, 2016 OWCP referred appellant, a statement of accepted facts (SOAF) and a list of questions to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, for a second opinion evaluation.

On September 23, 2016 Dr. Swartz completed his second opinion evaluation, provided his findings on physical examination, and concluded that there was no evidence that appellant was totally disabled from work for the period February 9, 2015 through January 7, 2016. He also reported that she had relatively mild degenerative changes in her cervical spine with no evidence of radiculopathy on physical examination. Dr. Swartz proposed that appellant's work restrictions should be 20 minutes of computer work at a time, alternated with a 10-minute break, and that she continued working 6 hours a day. He found that diagnostic studies from November 1, 2016 demonstrated minimal right carpal tunnel syndrome and right frozen shoulder due to biceps tendinitis.

In a supplemental report dated November 7, 2016, Dr. Swartz reviewed appellant's diagnostic studies and diagnosed employment-related partial tear of the subscapularis of the left shoulder. He determined that she could perform repetitive work for no more than six hours a day, but could work an additional two hours performing non-repetitive activities.

By decision dated November 14, 2016, OWCP denied appellant's claim for total disability for the period February 9, 2015 through January 7, 2016.

On November 15, 2016 OWCP provided Dr. Swartz' reports to Dr. Chauhan and requested his detailed comments should he disagree with Dr. Swartz' conclusions.

In reports dated November 22 and 30, and December 28, 2016, Dr. Chauhan disagreed with Dr. Swartz' finding that appellant was not totally disabled from work from February 9, 2015 through January 8, 2016 and continued to opine that she was totally disabled during this period based on his review of Ms. Duncan's reports. He further noted that her x-rays, physical findings of impingement of the left shoulder, and limited cervical range of motion constituted objective findings which existed during the period February 9, 2015 through January 8, 2016, during which she claimed she was totally disabled. Dr. Chauhan contended that appellant's work activities caused accelerated cervical spine degeneration leading to cervical spinal stenosis.

On January 23, 2017 OWCP expanded the acceptance of appellant's claim to include left shoulder impingement.

In a March 20, 2017 development letter, OWCP requested additional medical evidence supporting disability during the claimed period. It afforded appellant 30 days to respond.

In a March 9, 2017 report, Dr. Chauhan noted that appellant was experiencing increased left shoulder pain. He opined that her left shoulder was frozen resulting in pain and headaches. Dr. Chauhan reported that appellant was experiencing a "spontaneous flare up" of her accepted left shoulder condition with significant limitation of range of motion, muscle strength, and secondary pain. He found that she was temporarily totally disabled from work for two days.

On November 8, 2017 appellant requested reconsideration of the November 14, 2016 OWCP decision denying wage-loss compensation for total disability for the period February 9, 2015 through January 7, 2016. In an accompanying October 28, 2017 letter, she alleged that OWCP failed to consider all the medical evidence of record when evaluating her claim. Appellant discussed diagnostic studies dated September 6, 2005 through October 31, 2017. In support of her request for reconsideration, she provided copies of Dr. Swartz' reports, a copy of Dr. Chauhan's November 30, 2016 report, and an October 31, 2016 magnetic resonance imaging scan of her left shoulder.⁴

⁴ On January 17, 2018 appellant filed an additional occupational disease claim alleging that on December 28, 2017 she first became aware of extreme pain in her right forearm which she attributed to typing while performing her employment duties. OWCP assigned the claim OWCP File No. xxxxxx017 and accepted it for cervical sprain, cervical disc degeneration, and impingement syndrome of the left shoulder. Appellant's claims have been administratively combined by OWCP, with OWCP File No. xxxxxx672 serving as the master file.

By decision dated March 12, 2018, OWCP denied appellant's request for reconsideration of its November 14, 2016 decision denying wage-loss compensation for total disability for the period February 9, 2015 through January 7, 2016, finding that the evidence submitted was repetitious and cumulative.

In a March 1, 2018 report, Dr. Chauhan recounted appellant's reports of left shoulder pain, but noted that she could perform modified work duties. He performed a physical examination and diagnosed chronic left shoulder strain, left wrist and hand tenosynovitis and left wrist strain. Dr. Chauhan also diagnosed chronic cervical strain, aggravation of cervical spine degeneration, and left shoulder impingement. He opined that her work activities were the proximate cause of all her diagnosed conditions, specifically repetitive work, prolonged posture, and staring at the computer monitor. Dr. Chauhan found that appellant had aggravated her underlying condition of migraines because of prolonged computer usage and the resultant positioning which was aggravating and causing cervical spine degeneration and chronic cervical spine strain. He also noted that she was experiencing right shoulder pain as a consequence due to guarding of the left upper extremity as well as overuse of the right shoulder to compensate for her left shoulder while performing repetitive work with her upper extremities. Dr. Chauhan found that appellant's chronic right shoulder strain was causally related to her employment. He provided work restrictions for the period March 1 through April 30, 2018.

On March 20, 2018 Dr. Chauhan again addressed Dr. Swartz' September 23, 2016 report. He noted that Dr. Swartz found that appellant could work 6 hours a day with 20 minutes of keyboard work and then a 10-minute break from keyboarding and found that this was similar to his own recommendation. Dr. Chauhan noted that Dr. Swartz found that appellant could keyboard for approximately 33 percent of the time, while he believed that a restriction of 50 percent was more appropriate and practical for the employing establishment to accommodate.

In an April 19, 2018 report, Dr. Chauhan repeated his diagnoses from March 1, 2018 and opined that appellant's conditions were due to her employment. He found that she had reached maximum medical improvement (MMI).

Dr. Chauhan completed a report on April 27, 2018 addressing appellant's right forearm condition. He diagnosed tenosynovitis of the right forearm and right elbow lateral epicondylitis. Dr. Chauhan attributed these conditions to repetitive work activities.

On May 1, 2018 appellant appealed the February 23 and March 12, 2018 OWCP decisions to the Board.⁵

On May 3, 2018 OWCP referred appellant, a SOAF, and a list of questions to Dr. Scott A. Graham, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the nature and extent and residuals of the accepted work injury.

In a May 31, 2018 report, Dr. Chauhan described appellant's duties of computer work, telephone calls, keyboarding, writing, and prolonged sitting. He indicated that these duties required repetitive use of the hands, as well as prolonged posturing of the upper extremities, torso,

⁵ *Supra* note 2.

and neck. Dr. Chauhan diagnosed chronic left shoulder and wrist strain, left wrist and hand tenosynovitis, chronic cervical strain, aggravation of cervical spine degeneration, and left shoulder impingement. He also found that appellant had an aggravation of her underlying migraine due to her prolonged work on the computer and resulting body positioning. Dr. Chauhan opined that these conditions were the result of work activities. He noted that appellant had also developed a consequential right shoulder condition from “guarding the left upper extremity.” Dr. Chauhan diagnosed right shoulder strain and probable rotator cuff symptomatology. He found that appellant had reached maximum medical improvement.

On June 12, 2018 Dr. Graham reviewed the SOAF and medical records. He also performed a physical examination and diagnosed permanent aggravation of multilevel cervical degenerative disc disease, chronic left shoulder impingement syndrome/tendinitis, resolved left arm and wrist strain, and resolved right forearm strain. Dr. Graham attributed appellant’s conditions to her July 27, 2015 employment injury. He agreed that she had 13 percent permanent impairment of her right upper extremity. Dr. Graham provided work restrictions including no reaching above the shoulder, 6.5 hours of repetitive movements of the wrists, and pulling, pushing, and lifting up to 15 pounds. He also agreed that appellant should be restricted to typing for one of every two hours. Dr. Graham found that she should not answer the telephone.

On July 24, 2018 Dr. Chauhan described appellant’s work duties of computer use, telephone calls, writing, and prolonged sitting. He noted these duties involved repetitive use of the hands, as well as prolonged posturing of the upper extremities, torso, and neck. Dr. Chauhan diagnosed chronic left shoulder and chronic cervical strain, aggravation of cervical spine degeneration, left upper extremity tenosynovitis, resolved, and left shoulder impingement. He attributed the diagnosed conditions to her work duties. Dr. Chauhan found that appellant had reached MMI on June 22, 2017. He provided work restrictions of keyboarding one hour then one hour off, working six hours a day, and no telephone usage except for “outgoing calls.”

In reports dated September 7 and 18, October 18, and November 29, 2018, and January 22 and March 14, 2019, Dr. Chauhan repeated his findings and conclusions from July 24, 2018.

By decision dated April 26, 2019, the Board affirmed the February 23, 2018 merit decision, finding that appellant had not met her burden of proof to establish total disability from work for the period March 9 to 11, 2017 causally related to her accepted employment injury. The Board set aside the March 12, 2018 nonmerit decision and remanded the case for OWCP to conduct a merit review.

Following the Board’s decision, Dr. Chauhan completed a report on May 1, 2019 and found that appellant had recurrent right elbow lateral epicondylitis and tenosynovitis in addition to her previously diagnosed conditions. On July 1, 2019 he repeated his findings, diagnoses, and conclusions as well as noting that appellant retired on June 28, 2019. In an August 20, 2019 report, Dr. Chauhan noted that appellant’s symptoms had improved with retirement.

By decision dated September 19, 2019, OWCP denied modification of the November 14, 2016 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim,⁶ including that any disability or specific condition for which compensation is claimed is causally related to the accepted employment injury.⁷ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁸

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁹ The question of whether an employee is disabled from work is an issue that must be resolved by competent medical evidence.¹⁰ The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought. For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹¹

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.¹² The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹³

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is

⁶ *Supra* note 1.

⁷ See *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ 20 C.F.R. § 10.5(f); *B.O.*, *id.*; *N.M.*, Docket No. 18-0939 (issued December 6, 2018); *R.C.*, 59 ECAB 546, 551 (2008).

⁹ *Id.*; *T.A.*, Docket No. 18-0431 (issued November 7, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁰ *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *R.C.*, *supra* note 8.

¹¹ *S.M.*, Docket No. 17-1557 (issued September 4, 2018); *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹² *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹³ *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁴

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability from work for the period February 9, 2015 through January 7, 2016 causally related to her accepted employment conditions.

On September 23, 2016 Dr. Swartz, OWCP's second opinion physician, reviewed the SOAF, provided his findings on physical examination, and concluded that there was no evidence that appellant was totally disabled February 9, 2015 through January 7, 2016. He provided work restrictions and found that she was capable of light-duty work. As Dr. Swartz reviewed the medical record and supported his conclusion with medical rationale, the Board finds that his report represents the weight of the evidence regarding appellant's claim for total disability during the claimed period.¹⁵

On June 12, 2018 Dr. Graham, a second opinion physician, reviewed the SOAF, performed a physical examination, and diagnosed permanent aggravation of multilevel cervical degenerative disc disease, chronic left shoulder impingement syndrome/tendinitis, resolved left arm and wrist strain, and resolved right forearm strain. He attributed appellant's conditions to her accepted employment injury. However, Dr. Graham did not address whether disability from work during the claimed period. Evidence that does not address appellant's dates of disability is of no probative value and insufficient to establish her claim.¹⁶

Appellant provided a series of reports from Dr. Chauhan dated January 7, 2016 through August 20, 2019. He reviewed and addressed Dr. Swartz' conclusions and disagreed, finding that she was totally disabled February 9, 2015 through January 8, 2016. Dr. Chauhan further noted that appellant's x-rays, physical findings of impingement of the left shoulder, and limited cervical range of motion constituted objective findings which existed during the period February 9, 2015 through January 8, 2016, during which she claimed she was totally disabled. He contended that her work activities caused degeneration and increasing spurring ultimately leading to the worsening she experienced on February 10, 2015. Dr. Chauhan, however, did not provide medical rationale explaining how appellant's accepted cervical condition and left shoulder condition precluded her from performing light-duty work. The Board has found that medical evidence must include rationale explaining how the physician reached the conclusion that he or she is supporting.¹⁷ Dr. Chauhan failed to explain how appellant's inability to work February 9, 2015

¹⁴ *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁵ *M.L.*, Docket Nos. 18-1058 & 18-1224 (issued November 21, 2019).

¹⁶ *M.L.*, *id.*; *T.L.*, *supra* note 14; *L.B.*, Docket No. 18-0533 (issued August 27, 2018) *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁷ *M.M.*, Docket No. 18-0817 (issued May 17, 2019); *Beverly A. Spencer*, 55 ECAB 501 (2004).

through January 7, 2016 was causally related to her accepted employment conditions. Thus, these reports are of limited probative value and insufficient to establish appellant's disability claim.

In reports dated April 5 through September 21, 2015, Dr. Nugent, found that appellant was totally disabled from work due cervical spine pain and stiffness. The Board finds that Dr. Nugent's reports are conclusory in nature and fail to explain how the accepted conditions were responsible for her disability and why she was unable to perform the duties of her federal employment during the period claimed.¹⁸ Thus these reports are of limited probative value and insufficient to establish appellant's disability claim.

Appellant also provided a series of form reports from Ms. Duncan, a nurse practitioner. Reports by nurse practitioners are not considered medical evidence as they are not considered physicians as defined under FECA.¹⁹ Therefore, these reports are insufficient to establish a period of disability causally related to the accepted employment injuries.

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work during the claimed period as a result of the accepted employment injury.²⁰ Because appellant has not submitted rationalized medical opinion evidence to establish employment-related total disability for the period February 9, 2015 through January 7, 2016 as a result of her accepted conditions, the Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds appellant has not met her burden of proof to establish total disability from work for the period February 9, 2015 through January 7, 2016 as causally related to her accepted employment conditions.

¹⁸ *J.W.*, Docket No. 19-1688 (issued March 18, 2020); *S.J.*, *supra* note 12; *Kathryn E. DeMarsh*, *supra* note 12.

¹⁹ Section 8101(2) under FECA defines "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a (January 2013); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (neither a nurse practitioner nor a physical therapist is a physician under FECA); *see David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician.

²⁰ *Supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board